

VRS Extended Employment Rule Revision Advisory Committee

SESSION NOTES for December 17, 2014

Convened by Minnesota DEED Vocational Rehabilitation Services

Meeting Details

Date: Wednesday, December 17, 2014

Time: 10:00 am – 3:30pm

Location: ProAct, Eagan, MN 55121

Chair: John Sherman, VRS Extended Employment Program Director

Facilitator: Holly Johnson, Lanterna Consulting, Inc. contracted through Management Analysis & Development, Minnesota Management and Budget

Advisory members (or alternates) in attendance: *Jeff Bangsberg, Laura Bealey, Tim Dickie, Caroline Dobis (delegate for Steve Ditschler first half of meeting)/Steve Ditschler, Tony Gantenbein (delegate for DHS Dean Ritzman), Jeremy Gurney, Tim Hammond, Nancy Huizenga, Holly Johnson, Karen Johnston, Clayton Liend, Rod Pederson and John Sherman*

Key Perspectives for EE Rule Revision Work

Advisory members are asked to keep a system wide view for the EE Rule Revision topic discussions. The five key perspectives are summarized as:

1. **Advocacy Organizations**
2. **Public Partners**
 - Local level - counties, municipalities, etc. e.g. Ramsey County
 - State level - agencies, etc. e.g. Department of Human Services (DHS), Minnesota Olmstead Plan
 - Federal level
3. **Extended Employment (EE) Providers**
4. **EE Workers**
 - Currently working
 - Eligible but not currently working
5. **VRS - EE Rule 'Owner' and Accountable Agency**
 - VRS EE team: John Sherman, Anita Kavitz and Wendy Keller
 - Other DEED and VRS staff

Welcome and Opening Remarks

The meeting was called to order. John Sherman provided a brief overview of the meeting objectives and agenda. The advisory was provided a copy of the draft November 19th session notes and asked to provide any edits by December 24, 2014 after which time the notes would be finalized.

Next, John thanked the committee for their contributions to the rule revision process thus far. He acknowledged that many major forces have come into being that influence this process including the Olmstead Decision, the new Workforce Innovation and Opportunity Act, Minnesota First, etc.

John then shared a brief history of the two previous EE rule processes and timelines that had occurred at VRS during his time on staff. He noted that this type of system changes are by their nature disruptive to the current state. These changes are not optional, they

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are mandated and we must comply. The question is how can we effectively prepare and manage the disruption to minimize the negative impacts on all the system members and most notably the people that Extended Employment is intended to serve.

John reiterated the need for time to address the transition pieces and investments to support the transition. He asked for the EE Provider members of the advisory for estimates for what it would cost current EE provider organizations that anticipate needing to make substantive or significant changes.

John Sherman provided an overview of considerations for the EE Rule Revision as reviewed by the Advisory Committee to date. He summarized the content and materials covered during the previous five working sessions where priority topics have been addressed which occurred on September 3, 17, October 8, 29, and November 19, 2014.

Summary of Materials Reviewed by Advisory Committee to Date includes:

1. External Factors Impacting the Rule Change
2. Goals for a new EE System
3. Projected Rule Implementation Timeline
4. The Department of Justice Technical Assistance Guidance:
 - 1990 Integration Mandate (Americans with Disabilities Act, Title II)
 - 1997 Supreme Court Decision *Olmstead v. L.C.*, 527 U.S. 581
 - 2011 Statement of the DOJ Enforcement of the Integration Mandate of Title II of the ADA and *Olmstead v. L.C.*
 - Guidance and definitions for 'Integrated Settings', 'Segregated Settings', and 'Congregate'
 - Evidence that Integrated Setting is Appropriate
 - Informed Choice Process Requirements
 - Duty of Public Entities
 - New Services
 - Violations by Public Entities and Remedies for Violations of the ADA's integration mandate and *Olmstead*
 - Court Orders and Settlement Agreements
5. A draft Informed Choice Process based on DOJ technical assistance guide with input from the EE Rule Advisory Committee
6. A draft EE Program Structural model to implement the integration mandate of Title II of the ADA and *Olmstead v. L.C.* and address issues related to the effective management of the program
7. An overview of Extended Employment in Metro and Greater Minnesota

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After sharing the summary overview, John asked the advisory for their thoughts on the EE Rule revision discussion and progress to date. Members thanked John for providing the overview and for creating the committee and the kind of committee setting which has fostered the high degree of respect among its members to have the intense, important and sometimes difficult conversations.

Members shared a number of reactions and ideas related to the various elements as well as the overall complexity and challenges faced with the significant amount of changes being contemplated in response to the new legislation (WIOA) as well as the increased enforcement of both ADA and *Olmstead*. The advisory also discussed the wide variety of services and service providers that compose Minnesota's extended employment providers today.

EE providers noted that the transition magnitude and cost will be determined based on the size and speed of changes approved. Advisory member Karen Johnston also serves as the EE Government Affairs representative for Minnesota Organization of Habilitation and Rehabilitation (MOHR) and shared that MOHR is willing to formally request transition dollars to assist the EE providers in making the changes needed.

MOHR members on the advisory noted that MOHR has expressed questions on the \$12M in funds for Extended Employment and that they do not like the grant approach for fund distribution for dollars available beyond the base program dollars. If dollars are secured to help deal with the transition, what is an equitable approach and who will be eligible for those transition monies? EE providers would like to see planning/transition monies provided to the current providers in some form of equitable fashion.

Advisory Input on EE Rule Discussion Topics Discussion to Date

- **WIOA Sec.458 Limitations on use of Subminimum Wage.** This section goes into effect on July 20, 2016. It requires that all entities conduct annual, independent reviews to continue subminimum wages for individuals. The Department of Labor has put together a sub committee to look at eliminating the subminimum wage. Their work has a two year time table. Minnesota is conducting a wage and hours licensing review. They are also discussing paying above minimum wage but less than prevailing wage. These are connected but separate issues.
- **Potential negative consequences to consider with Informed Choice:** ACA mandates that you must provide insurance. Workers may then choose between MA and company sponsored insurance. If they choose to go with company sponsored, they will be added to the companies insurance which may be prohibitive. This is an 'unintended consequence' of the federal law and may impact the choices employers can afford to offer. Potential strategies for employers that are already being seen in the market: employer drop positions to below the 30 hour week so

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they aren't required to offer company insurance. This means the individual can stay on Medical Assistance which is often better insurance however this presents conflict to achieving full competitive employment.

- **Review of the EE program difference in metro and greater MN slides.**

At the November MOHR meeting, materials from the November 19th EE Rule Revision Committee were distributed to the membership. MOHR is currently about six weeks into becoming a new combination of three previous organizations. The new combined organization is composed of over 100 member organizations representing a wide variety of perspectives and services.

While Karen Johnston was unable to attend the special November MOHR meeting, she was inundated with questions afterward in her role with MOHR Gov't Affairs. She attempted to represent and convey the level of concern/questions from some MOHR members behalf to John Sherman and Kim Peck. The biggest areas of questions involved:

- who is able to sign checks; Employment First will say that the position is not Community Employment if the provider signs the check. This will be an issue for some employment that takes place on will be a location for some EE providers.
- the potential of collapsing of three tiers to two and questions around what it would look like; and
- questions around ABE's inclusion in the EE program. John pointed the advisory to a letter of clarification from CARF on standards for program services.

- **Overproduction/wage incentive.** John Sherman handed out a summary of the providers for EE hours in SFY 2014. He reviewed the federal definition of competitive employment and the hours in Community Employment. If providers overproduced, the hours were counted in Community Employment.

- A total of 69,791 hours were not reimbursed.
- 2014 rates were as follows: \$3.98 for SE, \$3.42 CE, \$1.91 CBE
- There a geographic component to overproduction with higher levels in greater Minnesota. There is also an unknown amount of 'hidden' production that occurs after so long, when some providers may just stop reporting hours.
- Rates have never been adjusted. Generally whenever a rate increase has been in play it's been applied to the base in 1998. There are three rates, three functions and significant overproduction. Businesses do not pay providers for supported employment services. Extended Employment was never intended to be a full cost system. There is no offset.

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- Tim Dickie noted that bidding to businesses does not include the support costs.
- In some cases, providers are reaching the "not to exceed level" nine months into the year and then are faced with having to absorb the costs for support for that last three months because they want to continue to support the individual however they've already exhausted what's available creating a financial bind for the EE provider.
- **Wage incentive:** The original purpose was designed to put dollars to best use. If you don't produce, you don't get paid allowing any extra General Fund dollars to be reallocated. What if wage incentive was modified by income incentive to try to increase wages. For example, take the unearned dollars in a current year and redistribute it in both programs for minimum wage or better. The function is to redistribute unearned dollars and provide a variable extra push for those with minimum wage or better jobs. A tradeoff with paying for overproduction is that at the end of the year it's divvied out. The issue is between wage incentive and paying for overproduction:
 - Tim Hammond asked why we would choose to encourage overproduction if the goal is to help people get off Supported Employment and into full Community Employment without any supports? EE Providers responded that situations are extremely individually based and difficult to track. There is also the reality of the net impact of inflows of new people into the system versus those exiting the system. The inflow into the system can be greater than those exiting Supported Employment which impacts overproduction.
 - Affirmative Business Enterprise (ABE) in Minnesota was added as a political compromise. It was attached in statute as a way to walk around center based. When initially ABE was first implemented in Minnesota in 2006 there were three organizations. Proponents argue that the philosophical piece to ABE is important: It's a business that just happens to hire people with disabilities. However it presents issues related to Extended Employment when it comes to ongoing supports and when does it move into integrated settings vs. what had been more traditional center based setting.
 - John Sherman noted that the key difference between individual and setting is crucial for the rule revision. He also reminded the committee that individual assessments take a whole lot of work compared to location.
 - VRS has significant challenges around the inability to approve an employment plan to someone who is identified as needing ongoing supports unless the resources have been identified. At a certain point VRS runs out of capacity. Historically, we moved people to waivers. This presents a structural issue that the EE rule alone cannot address. Ultimately there

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needs to more dollars in the system than are available today. If we increase the rates for the target areas without increasing dollars then we have effectively capped it again.

- Jeff Bangsberg asked that it be noted that in the current system, waivers stay with the county rather than follow the person. However EE dollars are not locked to the individual and they do have choices to move to other employers. Providers around the table said they have helped consumers move to other organizations where they may or may not have helped them make that decision. Some individuals with Severe and Persistent Mental Illness (SPMI) may go in and out of the supports.
- Rod Pederson shared that one of the biggest concerns is what will happen to enclaves. He is concerned about the potential impact on people trying to move from Center Based Employment to Community Employment/Supported Employment who may require an intermediary step to get there.
- John Sherman expressed another concern that there is data to suggest that some people who get put into shelter based workshops and are never moved e.g. Functional Industries Enduring Vision project. John said that the range of employment models is so much more diverse than it was 25 years ago. Question is how do we assess where individuals in CRPS engage multiple employment models? Factors to consider include the number of employers, number of hours, sense of community, etc. It is imperative that any decision be made with a truly informed choice decision process. What is the balance in Minnesota overall? 25 years ago, it was hugely on the workshop floor however it's moved significantly to the Supported Employment side.
- **Simple Wage Rate** John shared a worksheet showing Extended Employment rates if rates in 2014 were calculated based upon the same rate setting method used in 1997 to set the initial EE rates in the 1991 rule. 2014 payment rate: Supported Employment \$3.98, Community Employment \$3.42, Center Based Employment \$1.91. All three categories increases have beat the average percentage increase in the general public. \$3.98 returns avg. hrly wage of \$10.12. \$3.42 returns \$5.76 avg. hrly wage. \$1.91 returns avg. hourly wage of \$4.05. One approach would be to rebase a wage rate with Supported Employment as the basis e.g. 39%. VRS will have to set the rates.
 - Concerns: How do we help provide the needed services for those with the most significant disabilities? What does a rate look like that values and provides enough to support options like enclaves?
 - This assumes the rates are based on the current funding level. We are required to cap non-competitive employment.

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- Tony Gantenbein of DHS asked where do waivers, ticket-to-work, and other funding strategies fit into supports available to remain in the community? With everything underfunded relative to the demand/needs, we must look into other funding streams that come into play for the people with the most significant disabilities.
 - Karen Johnston reminded the committee of the need to recognize the federal pressures on VRS.
 - John shared his worries about the viability of the system. As another piece of the past compromise, VRS Extended Employment got out of the day to day management and allowed providers to take dollars to support their businesses while demonstrating the jobs and wages and meeting minimum requirements. The new requirements state that providers must be able to demonstrate informed choice compliance to an objective auditor. EE providers recognize the additional pressures this places on VRS.
 - Jeff Bangsberg noted that one of the benefits of the new legislation is that programs are becoming outcomes based more than ever before.
 - Rod Pederson said that the people they serve are not going away so how do we ensure services are available to those persons already in center based employment who choose to remain there.
 - John Sherman observed that we are striving to find the balance that we want to end up with in order to meet the issues of people (Rod's point) AND increase competitive employment for people with disabilities.
 - Another major consideration for VRS is Order of Selection. Currently, the only level open/funded is category one - the most significantly disabled. The EE program is not disability specific so it varies by population and the variety of factors depending on the provider. The exercise is to rebalance the system. "It ain't going to be easy and it might not be what any of us would design on our own however we have to do the best we can with what we have."
- **Expanding Competitive Employment** We need more jobs for the people we serve... if we can't get jobs in the private sector, can we create our own viable businesses? We need to think about creativity strategies. More and more nonprofits are challenged to become social enterprises.

There are increasing concerns with worker shortages. Business owners are coming in and starting to see the benefits now that they are looking for new sources of employees. For businesses frequently "the biggest incentive is the bottom line".

- What's the nature of the job pool... we're still creating a lot of retail. The advisory agreed with VRS's stance to stay out of what jobs were created and let the markets take care of it.

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- If consumers actively choose not be in competitive employment, then what are we required to make available to them?
- John said that the system has been putting more into Supported Employment than the current capacity to earn it (~\$612,000). VRS is looking at the ~\$70k overproduction as well as looking at growing services in targeted areas. How do we redistribute in the future and how do we ensure that the funds are used effectively? Options could include: redistribute on an existing model, we could RFP, or we could increase rates. One of the current rules is if you didn't earn the dollars on your last contract, than you can't ask for an increase on your new contract.
- New dollars will go to Supported Employment and that's been the policy for years.
- If capping come in, there are again several ways it could be done. There will be pushes from interested parties that says 'that's not enough'. How do we meet Rod's issue of ensuring those in services are not left behind? How do we meet Jeremy's issues with the role of enclaves? Do we take a passive or an aggressive approach? In the extreme, we could get entirely out of center-based funding. If the EE Program gets out of it, at what pace... 5 years, is it voluntary, etc.
- How do we deal with community employment?
- Another question: capital investment in facilities... as the system changes does that affect the flow? This is a question largely for the outside the metro area.
- We must continue to think about how we can support and comply with the mandates for competitive employment and integrated settings. We believe it will entail transformation for some providers and for some workers.
- As a system, one of our important objectives is to affect the changes with the least destruction and the most constructive processes and outcomes we can. Those efforts are likely to be different for people who are 25 years old and entering the EE system vs 55 years old who have been within center based employment for a number of years. We must create models that serve them both.

Next Steps & Wrap Up

Finally, John recapped the progress over the past six months and asked for the committee's input on the best way to proceed over the course of the next six months. Every member in attendance said they were willing and interested in continuing to serve with an anticipated level of monthly meetings as needed by VRS to complete the relevant input processes.

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John noted the ongoing challenges of securing advocacy representatives given the amount and frequency of uncompensated time the committee involvement typically involves for most advocates. Jeff Bangsberg noted that with his retirement, he is able and willing to continue serving. All agreed that increasing the input from additional advocates is important and John said he would continue to look for ways to seek such input.

John Sherman reiterated his idea from the November session, that one way to continue progress might be to create small groups to delve into specific technical aspects of the Rule revision and implications. For example, he proposed the following breakouts for small group work:

1. Rates
2. Wage incentive and overproduction
3. Incentives for expanding CE and how do we ensure individuals receive what they need
4. Capping

John said that small groups could be used to test models, list assumptions, discuss specific issues for each topic and then narrow down the approaches that are considered by the full group however the advisory members said they would prefer to meet as a full group and react/make recommendations on models developed and presented to the advisory by John Sherman. As one member stated, "we've built the team and the trust to work on it and the industry trusts you John."

The advisory asked John to develop and model two and three rate systems based on 2014 data for the next meeting on January 27, 2015. In addition to rates, other variables to consider include the pace of acceleration for capping center based/non-competitive employment services, and rate differentials that can be used to offset other services needed to support EE workers.

EE Providers noted that the system needs to assist organizations in helping people move through the generational differences. EE Providers do not have many younger people asking for center based services anymore. However, providers want to ensure those in centers today have a good place to be. Forcing someone currently satisfied with a good number of hours in a center based setting to accept a minimal hours a week position purely because it is in a more integrated setting may be wrong for that individual.

The advisory understands there is a value to being able to quantify the comparisons and will see what they can develop for quantitative input. Is there a way to combine Center Based Employment & Community Employment during the transition with a higher rate that reduces dollars over time? At what rate? How many people would it impact? What are the timelines?

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Other Model Building Considerations:

- a) what does each model do to address the overproduction issue?
- b) what does it do for demand that's coming in the system?
- c) how does it work for multiple business model and pure SE models?
- d) how will resources come in for organizations who already only work with Supported Employment workers?

The advisory assured John that they understanding that the changes VRS is responsible for making are mandatory and understand that this is a difficult task. They also understand that they must seek to find the best model for the state and the people the program is designed to serve rather than be entrenched in their individual organization's interests.

The advisory fully agreed that this revision will be more effective, less disruptive and harmful if resources can be secured to assist with the transformational system work needed to accelerate the opportunities for community based employment.

Next Steps:

1. The advisory agreed to continue and increase proactive sharing and cascading of the work of the VRS EE Rule Revision Advisory Committee with other EE system members notably the membership of Minnesota Organization for Habilitation and Rehabilitation (MOHR) for the benefit of input and support for the revision.
2. The advisory committee approved initial 2015 meetings as follows:
 - a. **Tuesday, January 27th**, 10:00am to 3:00pm
 - b. **Tuesday, February 24th**, 10:00am to 3:00pm
 - c. Both meetings will be hosted at Proact, 3195 Neil Armstrong Blvd, Eagan, MN 55121.
3. Preview for January 27, 2015 Working Session:
 - a. John Sherman will develop and share two and three rate models for reaction by the committee based on their request and considerations using 2014 data for estimate purposes.

Meeting Adjourned

The meeting was adjourned at 3:00pm.